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TAGS: [PGOV](#) [PREL](#) [UP](#)
SUBJECT: UKRAINE: ONE VICTOR? CABINET OF MINISTERS LAW
POISED TO REALIGN UKRAINIAN POLITICAL DYNAMICS

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[C](#). 06 KYIV 4355

Classified By: Ambassador, reason 1.4 (b,d)

[1](#)1. (C) Summary. A landmark Cabinet of Ministers law passed January 12 via a presidential veto override (ref A) will remake the Ukrainian political landscape once it comes into effect, although President Yushchenko cited a technicality to issue a renewed veto January 19 and returned the bill to the Rada with his suggestions, already twice ignored by the ruling coalition. Yushchenko told Ambassador January 19 that he was furious with Yanukovych for breaking their January 10 agreement to work together but felt he had secured Yanukovych's agreement to cooperate on changes at an emergency January 18 session of the National Security and Defense Council (NSDC). The CabMin law greatly empowers the premier, further marginalizes the presidency, and, in tandem with a new draft law on the opposition, promises a shift of the "balancing force" in Ukrainian politics away from the President and towards the opposition in the Rada (parliament). The law also spells the effective end of FM Tarasyuk's lonely campaign to stay in office, with a new Foreign Minister almost certain to emerge in early February, in spite of President Yushchenko's statements to the contrary. Opposition leader Yuliya Tymoshenko claims she joined the coalition majority for the veto override as a tactical move in a greater strategy involving potential Constitutional Court and Presidential decisions that could overturn political reform in the courts and dismiss the Rada for early elections. Regions MPs claim an alleged politicization of the Security Service of Ukraine (SBU) played a role in the sudden reversal of Yanukovych's stated intent to pursue cooperation with Yushchenko, although Yushchenko and Tymoshenko both suggested Yanukovych reached out to Tymoshenko to maximize Regions' political gain. The future direction of the SBU and law enforcement reform is one of many open questions for Ukraine's 2007 political calendar regardless.

[1](#)2. (C) Comment: Yanukovych was significantly strengthened January 12 by passage of the Regions-drafted Cabinet of Ministers law without any compromise with Yushchenko's dozens of concerns/amendments that would make the bill acceptable to the president's team. It is unclear as of January 19 whether an apparent Rada clerical error might give Yushchenko an opening to claw back ground. There was no immediate reaction by the PM to Yushchenko's renewed veto January 19, because all major figures had travelled to Kharkiv for the funeral of deputy Regions' leader Yevhen Kushnariov, but Speaker Moroz alleged in a letter to the presidential secretariat that Yushchenko had no right to veto it again.

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Since Our Ukraine (OU), the Tymoshenko Bloc (BYuT) and Moroz' Socialists seemed poised in June 2006 to form a "Coalition of

Democratic Forces," in the span of a short seven months, Yanukovych and Regions masterfully took advantage of the desires and weaknesses of first Moroz, then Yushchenko, and now Tymoshenko to achieve their goal of consolidating power in a Regions'-led government. The USG needs to be thinking mid-term, through the 2011 parliamentary elections, on how best to engage Ukrainian leaders, on how to keep them looking and moving westward. Yanukovych more than ever will serve as the linchpin to the system going forward; we will need to remind him of his promises in Washington in early December to work with Yushchenko. End Summary and Comment.

CabMin law: More of an earthquake than a blip?

13. (C) The CabMin law as currently constituted represents more of a realignment of power relationships than a blip or adjustment in the two Viktors dynamics we've seen since August (ref B). In essence, it resolves most of the institutional arguments over unclear provisions in the constitution over the past six months in favor of the PM and Cabinet. The law thus appears to move Ukraine towards a German model with a power Chancellor at its center and away from a Polish-French Presidential-PM cohabitation model in which the President has a higher profile even if the PM formally heads the government (note: Poland and France were the most frequently cited parallels of the Ukrainian political system in 2006 after constitutional changes referred to as "political reform" came into effect).

14. (SBU) Although there are plenty of opinions on both sides and the constitutional court will eventually have to make a final determination, our read of the law's provisions suggest the following may encroach on Yushchenko's constitutional prerogatives as president:

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- if the President fails to nominate Foreign and Defense Ministers within a 15 day period, the Rada coalition may nominate the Ministers (article 9);

- there is no differentiation between the dismissal procedures used against ministers nominated by the president (FM, DefMin) and the coalition/PM, giving dismissal initiative/authority to the PM alone (article 19);

- the PM and a relevant minister gain mandatory countersigning authority for many constitutionally defined Presidential actions, including diplomatic appointments, NSDC decisions, the decision to declare a state of emergency, and the establishment of courts. The lack of a countersignature constitutes an effective PM veto over relevant presidential acts (article 27; note: while the countersignature provision is envisaged in the constitution, previously that has been only an after-the-fact clerical endorsement. After coming to power in August, Yanukovych's legal team, led by current Justice Minister Lavranych, claimed the PM had a substantive process right of approval);

- the NSDC, as well as the Presidential Secretariat and other presidential bodies, are not allowed to give instructions to the Cabinet of Ministers or interfere into their activities (Article 29; note: the NSDC previously had such authority on national security policy-related issues);

- The Rada endorses the Cabinet of Ministers program in the form of a resolution rather than law (article 11; the President can veto laws but not resolutions);

- chairmen of local state administrations (informally referred to as governors) are under the control of, accountable to, and disciplined by the Cabinet of Ministers, which may overrule local government decisions and initiate dismissal requests to the President (article 25).

Yushchenko: belatedly pushing back, using a technicality?

15. (C) In a January 17 news conference in Donetsk, Yushchenko accused Yanukovych of breaking their January 10 agreement to draft a bill jointly, called Yanukovych's veto override move a "serious mistake," and said he would not sign the bill "for ethical reasons." Late January 18, he called an emergency session of the NSDC, with Yanukovych in attendance, taking advantage of an apparent clerical error by the Rada that made the December and January bill texts different to claim the right to issue a renewed veto. Yushchenko told Ambassador January 19 he had been "furious" and had "raised the roof" during the NSDC session over Yanukovych's failure to follow through on their agreements. He complained that he had to "slap the hands of the government" every other day. According to Yushchenko, Yanukovych sounded conciliatory at the end of the session. Yushchenko said that he would send Presidential Secretariat head Baloha to work with Yanukovych on a road map on how to alter the bill. Although the issues were not resolved, Yushchenko remained optimistic that they could be.

16. (SBU) After the NSDC session, Yushchenko told the press that the January 12 veto override had ruined all previous efforts at cooperation between the President, Cabinet, and Rada and that the Rada should revisit the bill to ensure it was in line with the Constitution. Citing the Constitution and a 1998 Constitutional Court ruling addressing the issue of differently worded bills forwarded to the President, he stated he had the right to return the law to the Rada for a repeat examination, giving the Rada a chance to amend the text. Yanukovych's terser remarks after the session acknowledged a need to harmonize the CabMin law with the constitution but did not indicate what mechanism or basis might be used to do so. With all major coalition figures in Kharkiv January 19 to attend the funeral of deputy Regions' leader Kushnariov, accidentally shot to death in a January 16 hunting accident, there was no reaction from the PM to Yushchenko's renewed veto January 19. However, Rada Speaker Moroz, through the Rada Secretariat, sent a letter to the Presidential Secretariat demanding that Yushchenko sign the law and alleging that he had no right to veto it again.

The Rada opposition to emerge as a new counterbalance?

17. (SBU) Yanukovych's concluding remarks at the close of the Rada's session January 12 consciously emphasized the triumph of Ukrainian "parliamentarism" as opposed to cooperation with the presidency, according to self-acknowledged Yanukovych speechwriter and Regions MP Hanna Herman (ref A). The vote tradeoff between Regions and BYuT -- veto override in

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exchange for a first reading of a draft law on the opposition (with a final text still to be negotiated) and passage of a local council imperative mandate -- also highlighted the growing center of gravity at the Rada, between coalition and empowered opposition, rather than between PM and President. A January 17 op-ed by Yanukovych's Chief of Staff Lyovochkin in "Ukrainska Pravda" stressed the importance of a strong opposition, noting that the law on the opposition should become an "integral component of the new political system's legislation." Lyovochkin followed Yanukovych's lead in not discussing the role of the president or presidential-premier relations in the system of checks and balances.

18. (C) Other institutional actors will play key roles. The Constitutional Court's role in particular looms ever larger, since the Court now becomes the last legal resort for resolving differing interpretations of the Constitutional powers of the president and cabinet and faces a full docket likely only to grow in the coming weeks. International engagement, playing on Yanukovych's desire to be accepted, and the Ukrainian media, generally unfettered since the

Orange Revolution, will also remain key components in helping keep Ukraine moving in the right direction, although there are signs of fatigue in both areas. There were fewer journalists covering the Rada's closing session featuring the veto override and Yanukovych's closing remarks than at any significant Rada event since the Orange Revolution. While Ukraine's citizens have not noticeably reacted to recent political developments, the parliamentary elections scheduled for 2011, while four years away, serve as a reminder that in a competitive multi-party democracy with an electorate that takes its right to have its vote respected seriously, politicians and parties ignore citizen sentiment at their peril.

The Yuliya factor: Courts key, goading Yushchenko

¶9. (C) A relaxed Tymoshenko explained her strategy and tactics to Ambassador January 18. While claiming BYuT as the opposition now served as the chief balance to Yanukovych, her approach to her strategic ends -- forcing Yanukovych from office and restoring "democratic forces" to power -- hinges entirely on a series of potential decisions by two other institutions, the Constitutional Court and President Yushchenko. Her tactics are designed to influence those two institutions to make decisions that could theoretically lead to her cherished goals: reversal of political reform and pre-term elections. She claimed 11 of the 18 Constitutional Court judges were currently willing to rule on the merits of law as opposed to political factors. This gave appeals a real chance of success; "the Constitutional Court is at the center of our attention and strategy." Less certain in her mind was whether Yushchenko would display the courage to make the tough political decisions following up openings the Court might create.

¶10. (C) Tymoshenko claimed BYuT's package voting with Regions was purely tactical, with the key being the local council imperative mandate law. However, the implication and body language of her comments indicated that the veto override vote on Friday was also intended as a wake-up call to Yushchenko, to force him to deal with her in backing up his veto power and coordinating moves by BYuT and OU. She claimed that since August there had been no high level dialogue; Yushchenko had only met her once, immediately after Yanukovych became PM, and refused to return her calls. However, Yushchenko told the Ambassador January 19 that he had called Tymoshenko just before the vote to urge her to "be a patriot and not vote to override."

¶11. (C) Laying out her court-based strategy, Tymoshenko claimed the local imperative mandate law was crucial because it created the right climate for the Constitutional Court to rule on a petition concerning imperative mandates in the Rada, a decision she expected January 25. The Court ruling in turn was critical to prevent BYuT and OU MPs from jumping to the Regions-led coalition and giving them a veto-proof 300 MP majority. Since BYuT and OU alone could not secure a positive vote on the imperative mandate law before January 25th, she had to cut a deal with Regions. Tymoshenko said that her whole strategy would fall apart if Yushchenko vetoed the local imperative mandate law. She noted that she had met with NSDC Secretary Haiduk and his business partner Taruta in the middle of the night January 16 to lobby them to convince Yushchenko not to veto the law. In Tymoshenko's view, passage of a good law on the opposition is important, but not a key part of her current strategy.

¶12. (C) The next key constitutional court ruling, which Tymoshenko predicted could come in late February/early March,

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would be on the technical legitimacy of the Yanukovych government, based on the delay in its assuming office. She assessed the probability of a positive outcome at 50-50. It would then be up to Yushchenko to use the opportunity to

dismiss the Rada and call pre-term elections. In her view, given current popular rating dynamics, by spring it would be realistic to see: Regions, popularity to slip to 20-25%; for OU to aim for 10% if former Interior Minister Lutsenko was named head, 6-7% otherwise; BYuT to win up to 30%; and 25-30% would be lost to small parties under the 3% threshold, with Vitrenko the possible sole exception going over the threshold. Redistribution of unrepresented small party shares would give BYuT and OU a working majority.

¶13. (C) Tymoshenko concluded her analysis by stating that if potential Court/Yushchenko decisions did not go the right way, there would be no other mechanism to effectively counter Yanukovych/Regions, who would be in power for the long haul, and "democratic forces" essentially without influence. In her view, there was no way of making a "good guy" out of Yanukovych; the only feasible option was to try to remove him.

Tarasyuk's fate - a doomed FM?

¶14. (C) By giving the Rada coalition the right to nominate a FM or DefMin after 15 days if the President declined to nominate a candidate, the new CabMin law effectively dooms Tarasyuk come February, no matter what the status of his court appeals. While Yushchenko in Donetsk January 17 expressed confidence the Constitutional Court would support him on Tarasyuk, it seems unlikely that Tarasyuk would still be around by time the court rules. Yanukovych stated January 15 that the Rada would take up the issue of a new FM when it reconvened February 6. Tymoshenko criticized Yushchenko's stance on Tarasyuk to the Ambassador in conversations in December and January, suggesting Yushchenko needed to protect his right to nominate an FM of his choosing by nominating a new Minister quickly rather than fighting the rearguard court action to defend Tarasyuk and battling cabinet/rada efforts to take action into their own hands in February.

The alleged SBU factor - security agency/sector adrift?

¶15. (C) The rationale for Yanukovych's about-face from announcing intent to cooperate with Yushchenko on a joint bill January 10 to voting with BYuT to override Yushchenko's veto January 12 varies, depending on the source. Tymoshenko claimed to Ambassador that Regions had quickly concluded there was no common ground with the President over the CabMin bill and that there would be continued squabbling over the smallest of details. Her assertion that Regions had provided a range of options in negotiations over the local imperative mandate law, including override of the presidential veto, suggests Regions was already searching for the best deal for its interests. Yushchenko separately confirmed this scenario, telling Ambassador that Yanukovych had turned to Tymoshenko to strike a deal on the veto override.

¶16. (C) Not surprisingly, Regions sources - most recently Regions' Taras Chornovil to Ambassador January 16 - claim that SBU sources tipped off Yanukovych January 11 that Yushchenko and Presidential Secretariat Head Baloha had authorized the SBU to tap Moroz and even to target Yanukovych, and that this was the decisive factor that led Yanukovych to drop the promised cooperation with Yushchenko in favor of the deal with Tymoshenko (ref A). On January 16, the SBU spokeswoman held a press conference to dispute allegations that it had tapped Moroz, suggesting that, on the contrary, those behind the bugging of Moroz' conversations with the British Ambassador in mid-2006 were likely the same ones caught by the SBU monitoring calls of constitution court judges (note: in late 2006, the SBU announced the arrest of people involved in bugging both judges and Our Ukraine MPs, indicating that those implicated had direct ties with prominent unnamed Regions MPs).

¶17. (C) Comment: Whether Regions' allegation against the SBU is true or is tit-for-tat for the arrests of Regions-affiliated figures monitoring judges and OU figures, the SBU remains faction ridden and adrift in the aftermath of

the early December dismissal of former chief Dryzhchany. In fact, the overall fate of efforts to reform the entire law enforcement/security sector are unclear. An outsider, Dryzhchany pushed a reformist agenda and refused to allow the SBU to be politicized in the struggle for power between the Presidential and PM teams, as Presidential Secretariat Head Baloha allegedly wanted.

¶18. (C) Comment, cont: The SBU factor bears further watching,

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particularly in the wake of ex-SBU chief Radchenko's appointment January 12 as Deputy PM in charge of law enforcement, national security, and defense related issues and agencies. Also of concern is ongoing Ministry of Interior housecleaning of reform-minded personnel affiliated with ex-Minister Yuri Lutsenko. On January 11, new Minister of Interior Tsushko appointed as deputy Minister General Popkov, an Orange Revolution villain who, as head of the Interior Ministry's Ground Forces, verbally authorized troops to deploy against protesters on the Maidan the night of November 27, 2004, before other security officials intervened, warning Popkov to back down. Media sources report that at a January 16 meeting, Tsushko invited nearly all oblast police chiefs to submit their resignations.

¶19. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.

Taylor